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# EXPANDING THE VICTIM'S ROLE IN THE CRIMINAL COURT DISPOSITIONAL PROCESS: THE RESULTS OF AN EXPERIMENT\*

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## I. INTRODUCTION

In colonial America, the criminal justice system functioned without either effective police forces or public prosecutors. Instead, victims paid for warrants, did their own investigative work, and retained a private attorney to write an indictment and prosecute the offender. Restitution was emphasized over incarceration. In short, the victim was both a key decisionmaker in, and a direct beneficiary of, the criminal justice system.<sup>1</sup>

During the nineteenth century, the goals of the criminal justice system changed from restitution to deterrence and punishment, as a distinction was drawn between offenses against the social order (crimes) and offenses between individuals (civil wrongs). The powers and responsibilities that victims previously held were assumed by public prosecutors as society's advocates. Today, public prosecutors decide whether

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<sup>1</sup> See McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AM. CRIM. L. REV. 649, 649-50 (1976).

charges will be filed, what charges to file, and what sanctions to request the court to invoke.

The law no longer gives victims control over their cases. The formal role of victims in criminal proceedings generally is now confined to testifying for the prosecution. Because most cases are disposed of without trial, however, many victims do not have the chance to tell their story on the witness stand. Victims do participate informally in the criminal justice process by providing prosecutors with information about the crime. Even informally, however, it is unusual today for victims to be asked what action they believe the court should take; moreover, victims frequently are not informed of what happened in their case or why.<sup>2</sup> The victim has been aptly characterized as the forgotten person in criminal proceedings.<sup>3</sup>

To some extent, the failure of court officials to grant victims an informal role is surprising. Elected criminal justice officials certainly are interested in promoting good relations with the public. They have a particular stake in maintaining good relations with victims because victims' refusal to cooperate can cause them to lose cases. There are strong reasons, however, why officials do not consult victims. Prosecutors have political, legal, and administrative concerns that lead them to pursue some cases less vigorously than others, and other cases not at all.<sup>4</sup> Moreover, the shared interest of prosecutors, judges, and defense attorneys in expediting cases and ensuring predictable outcomes, particularly in lower criminal courts, results in well-defined norms prescribing appropriate dispositions for common offenses.<sup>5</sup> Case similarities are stressed, while idiosyncrasies of cases, defendants, and victims are minimized. Court officials often believe that victim participation in the decision process would only reduce the predictability of outcomes and threaten their interests.

Victims are not normally consulted by officials because they do not understand that the prosecutor is not actually representing them, or necessarily acting only in their interest. Victims may become frustrated

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<sup>2</sup> W. McDonald, Notes on the Victim's Role in the Prosecutorial and Dispositional Stages of the American Criminal Justice Process 14 (paper delivered at the Second International Symposium on Victimology, Boston (1976)).

<sup>3</sup> See McDonald, *Criminal Justice and the Victim: An Introduction*, in CRIMINAL JUSTICE AND THE VICTIM 17, 19 (W. McDonald ed. 1976) (6 Sage Criminal Justice System Annuals).

<sup>4</sup> A. Goldstein, Defining a Role for the Victim in Criminal Prosecution 5 (paper presented at the conference on "Victims and Criminal Justice," sponsored by the American Jewish Congress and the New York University Law School (Feb. 26, 1978)).

<sup>5</sup> See, e.g., J. EISENSTEIN & H. JACOB, FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS (1977); P. NARDULLI, THE COURTROOM ELITE: AN ORGANIZATIONAL PERSPECTIVE ON CRIMINAL JUSTICE (1978); A. ROSETT & D. CRESSEY, JUSTICE BY CONSENT: PLEA BARGAINS IN THE AMERICAN COURTHOUSE (1976).

and angry when they see that an assault against them may be treated only as disorderly conduct, that prosecutor and defense attorney appear to collaborate rather than act as adversaries, that their cases receive only a few minutes of the court's time, or that after pleading guilty, the defendant may be home before they are. If victims can be made to understand and feel a part of the criminal justice system, their participation may not reduce the predictability of outcomes as much as officials fear.

## II. THE VICTIM INVOLVEMENT PROJECT

Recently, there have been efforts to aid victims in gaining greater participation in and understanding of criminal court adjudication.<sup>6</sup> The Victim Involvement Project (VIP) is one such recent effort. VIP grew out of research into the role of victims in criminal court decision-making. Most victims had personal desires that they hoped to realize by cooperating with court officials.<sup>7</sup> Although the outcomes that many victims sought were not especially harsh,<sup>8</sup> they seldom had an opportunity to express their views to officials. Many victims were not even informed of the outcome of their case. Not surprisingly, a majority of victims surveyed expressed dissatisfaction with their experience in the criminal justice system.

VIP was begun by the Vera Institute of Justice as a systematic effort to communicate the concerns of individual victims to officials in Brooklyn Criminal Court, one of the busiest courts in the nation.<sup>9</sup> The

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<sup>6</sup> *See, e.g.*, IND. CODE § 35-35-3-2 (1982) (Indiana law requires prosecutors to inform victims of plea negotiations and to advise them that they may offer their opinions); W. KERSTETTER & A. HEINZ, PRETRIAL SETTLEMENT CONFERENCE: AN EVALUATION (Law Enforcement Assistance Administration, 1979) (relating an experiment in Dade County, Florida, in which court personnel were required, in selected cases, to hold pretrial conferences at which victims, defendants, and arresting officers were allowed an opportunity to express their opinions); R. ROSENBLUM & C. BLEW, VICTIM/WITNESS ASSISTANCE (1979) (report prepared for the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration) (relating efforts of staff of victim assistance programs in Pima County, Arizona, and Multnomah County, Oregon, to help victims prepare information to be included in presentence reports to judges); Dubow & Becker, *Patterns of Victim Advocacy*, in CRIMINAL JUSTICE AND THE VICTIM 147 (W. McDonald ed. 1976) (6 Sage Criminal Justice System Annuals) (discussing two community-based programs in Chicago that employed advocates to lobby court officials for stronger response to crimes that most concerned the community; one tactic used by the advocates was packing the courtroom in targeted cases with local residents in a visible display of community concern).

<sup>7</sup> R. Davis, V. Russell & F. Kunreuther, *The Role of the Complaining Witness in an Urban Criminal Court* 23 (July 1980) (unpublished manuscript, Vera Institute of Justice, New York).

<sup>8</sup> Less than half wanted the defendant incarcerated; the remainder sought restitution, protection, or a lesser form of punishment. *Id.* at 24. *See also* W. KERSTETTER & A. HEINZ, *supra* note 6 (noting that in Dade County experiments, victims did not come to pretrial settlement conferences "looking for the maximum").

<sup>9</sup> The Victim Involvement Project, funded by the Edna McConnel Clark Foundation,

key idea behind VIP was the stationing of victim advocates in the courtroom. Advocates would ask victims what outcome they wanted, and make sure the victims' concerns were communicated to court officials. Advocates would also notify victims of upcoming dates when it was imperative that they be in court, help court personnel to avoid calling victims into court needlessly, and provide other services, such as orienting victims to the court process and assisting them to secure the release of vouchered property.

Because victim advocates were to be stationed in the courtroom, the VIP had to be implemented through an organization with legal standing in the court. The Kings County District Attorney's Office agreed to cooperate with the Vera Institute in the project. A VIP representative was given space at the prosecutor's table in one all-purpose courtroom that calendared between twenty and thirty cases per day.<sup>10</sup> Prosecutors in that courtroom were instructed to listen to what VIP staff had to say about the victim's viewpoint, to take that information into account in deciding the state's position, and, where appropriate, to share the information with the court.

VIP's organizers hoped to achieve greater success in having victims' views heard by the court than victims had achieved on their own. VIP's planners, and later its administrator, sought to bolster the relationship between project staff and prosecutors by basing the relationship upon a mutual exchange of services, in much the same way that exchange relationships exist throughout the court system.<sup>11</sup> In return for prosecutors' willingness to listen to their representations on behalf of victims, VIP staff would notify victims to come to court when needed, provide prosecutors with a better description of the criminal incident based upon VIP's conversations with victims, give prosecutors information about victims' willingness to cooperate with authorities, and assist prosecutors with clerical tasks in the courtroom. Close ties between VIP and the district attorney's office, however, had major disadvantages. Project staff could communicate their information about victims' interests only to prosecutors; whether or not to pass the information along to judges was within the prosecutors' discretion. It became clear that prosecutors sometimes, with reason, did not convey the information to the judge;

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was begun in April 1978 by the Vera Institute of Justice in cooperation with the Kings County District Attorney's Office. Management of VIP was later transferred to the newly created Victim Services Agency in July 1978.

<sup>10</sup> All-purpose court parts handle many different types of proceedings for cases that have not been disposed of at arraignment (these cases usually involve felony charges). Proceedings that occur in all-purpose parts include preliminary hearings, motions, administrative dispositions, misdemeanor trials, and sentencing.

<sup>11</sup> See Cole, *The Decision to Prosecute*, 2 LAW & SOC'Y REV. 331 (1970) (study of a prosecutor's office focusing on exchange relationships).

VIP staff, then, were powerless to do anything. After the project began, several more subtle drawbacks to the project's close alliance with the prosecutor's office also became apparent.

The results of the VIP experiment are worth reviewing because of what they reveal about decisionmaking in criminal courts, the role of victims in that process, and the obstacles to reform of the process.

### III. METHOD

A nonequivalent control group, quasi-experimental design<sup>12</sup> was used to assess VIP's first-year impact. Before the project began, two court parts in Brooklyn Criminal Court were examined and found to be similar in terms of both the type and disposition of cases handled. Interviews conducted with victims from the two court parts revealed that the parts also were similar with respect to victims' perceptions of the adjudication process.<sup>13</sup> VIP was then introduced into one of the parts, which became the "experimental" court part. The other part, which did not receive VIP staff, was designated the control part.<sup>14</sup>

Following the implementation of VIP, several separate samples of data were collected from each court part: (1) interviews with victims, (2) case outcomes based on computerized court information, and (3) records of restitution orders and written admonishments. To assess VIP's effect upon victims' perceptions of the adjudication process, interviews were conducted with 295 victims whose cases were disposed of in either the experimental or control court part between October 1978 and January 1979. The interviews measured victims' perceptions of (a) the fairness of case outcome, (b) the responsiveness of court officials to victims' concerns, (c) the adequacy of information that victims were given about the progress of their cases in court, (d) their involvement in the decision process, (e) their treatment by court officials, and (f) their willingness to cooperate with the criminal justice system in the future. In-

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<sup>12</sup> See D. CAMPBELL & J. STANLEY, *EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH* (1963).

<sup>13</sup> In order to ascertain whether the two court parts were similar in terms of victims' perceptions of the court process, 96 victims whose cases were disposed of in either part were interviewed. These interviews were virtually the same as those that were administered to victims following VIP's implementation.

<sup>14</sup> The design used was clearly less desirable than a design in which VIP staff would have intervened in randomly selected cases in one or more court parts. The more rigorous design was not chosen, however, because encouraging officials to consider the concerns of victims in some cases would likely have resulted in heightened sensitivity to victims' concerns in control cases as well. Another more rigorous design, random assignment of cases to experimental and control parts, was administratively unfeasible. Any other more rigorous designs involving multiple court parts would have been prohibitively expensive, administratively unworkable, or both.

interviews were completed with 142 victims in the experimental part<sup>15</sup> and 153 victims in the control part.<sup>16</sup>

In order to determine whether VIP had an effect upon court outcomes and sentences, a second sample of 1,108 cases disposed of either in VIP's court part or in the control part was collected from computer files of the Victim Services Agency. This sample represented all cases disposed of in the two court parts between November 1978 and January 1979.

VIP was expected to have the greatest impact on the court's use of restitution and admonishments. Because the computer data base did not contain indications of restitution or admonishments, manual logs of the Victim Services Agency were used to compare (a) the frequency with which the court ordered restitution in VIP's court part with the frequency of restitution orders in the control part from November 1978 through July 1979, and (b) the frequency with which each court part issued written admonishments from January through June 1979.<sup>17</sup>

Research teams also interviewed court officials and spent several weeks observing in the VIP court part and in the victim reception area. These data were used to aid in the interpretation of the other data sources.<sup>18</sup>

#### IV. RESULTS AND DISCUSSION

##### A. ALLEVIATING THE BURDEN OF COURT APPEARANCES UPON VICTIMS

VIP's presence seemed to help humanize the court process for victims. For example, VIP was able to spare victims from needless trips to court. Victims were excused from attending more scheduled court dates in VIP's court part (36%) than in the control part (25%).<sup>19</sup>

Victims who had contact with project staff reported that VIP did much to reduce discomfort and confusion in the court process. The staff assisted victims in numerous ways: helping to secure the return of

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<sup>15</sup> Totalling 67% of those attempted.

<sup>16</sup> Totalling 60% of those attempted.

<sup>17</sup> Restitution and admonishments are most frequently ordered in cases that are adjourned in contemplation of dismissal or in cases in which the defendant pleads guilty and receives a sentence of conditional discharge. Cases adjourned in contemplation of dismissal are held open for six months. If at the end of that time the defendant has not violated the conditions set by the court and has not been rearrested, the case is dismissed. Both restitution and admonishments are considered by the court when requested by the victim. Court officials initiate such actions on their own only infrequently.

<sup>18</sup> For a fuller description of the study method and results, see R. Davis, M. Tichane & E. Connick, *First Year Evaluation of the Victim Involvement Program* (Oct. 1980) (unpublished report, Victim Services Agency, New York State Division of Criminal Justice Services).

<sup>19</sup>  $t = 2.47$ ,  $df = 417$ ,  $p < .01$ .

vouchered property; obtaining permission from employers for victims to take time off from work to attend court; and giving victims an explanation of the day's proceedings before they left court. VIP staff also encouraged court clerks to call the cases of victims who were present in court at the beginning of the day so they would not have to wait. The staff also requested closed hearings to lessen victims' discomfort in rape cases. VIP was at its best helping victims to negotiate the court process in these small but important ways.

VIP staff, however, did not always succeed in expediting things for victims. Court clerks sometimes refused to call the cases of victims who were present early in the day, and victims had to spend the whole day in court even though the hearing itself might last for only half an hour. Long waits at court were one of the most frequent complaints voiced by victims interviewed in both the VIP and the control court parts. Although VIP explained to victims what was happening at court, that was not always enough to mollify those who were angry. For example, VIP staff explained to one victim that his case had to be adjourned because the defense attorney had not appeared. The victim, who had been waiting in court for some time, became furious and left, vowing not to return. The project's close ties to the prosecutor's office also limited VIP's effectiveness in aiding victims. Because the district attorney's office objected, for example, VIP could not notify victims of the outcome when cases were dismissed.<sup>20</sup>

Finally, role conflict among VIP staff at times hampered their ability to aid victims. Because of their close working relationship, VIP staff tended to identify with prosecutors' interests and modes of behavior. VIP staff sometimes described themselves to victims as members of the prosecutor's staff. On occasion, they questioned victims in the same brusque manner that prosecutors used. In one instance, a VIP representative was observed threatening to subpoena a victim who was reluctant to return to court.

Because of these characteristics, VIP's activities had little demonstrable impact upon victims' perceptions of the court process. There were no significant differences between VIP's court part and the control part in the percentage of victims who felt that they had been treated well in court,<sup>21</sup> who believed that they had been kept informed of the

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<sup>20</sup> The prosecutors argued that dismissals were usually the result of victims failing to appear in court; such victims, they said, probably would not be interested in the case outcome, nor did they merit the courtesy of being informed. It seems likely, however, that the District Attorney's Office was also concerned about the negative reactions that victims might have upon finding out their case was dismissed.

<sup>21</sup> 44% compared to 37%, respectively.

status of their case,<sup>22</sup> or who believed that the court was responsive to their needs.<sup>23</sup> One victim summed it up well when she said that although VIP staff members were “wonderful,” she did not think that they “really had the power to do anything.”

#### B. ADVOCATING FOR VICTIMS

When victims came to court, a VIP representative talked to them about their interests as they waited in the reception center for their cases to be called. That information was given to another VIP representative in the courtroom, who passed it along to the prosecutor or, more rarely, to the judge during a bench conference. Communicating the victim's desires to officials was not always expected to result in the outcome that the victim wanted. Where victims wanted restitution or a warning issued to the defendant to stay away from them, outcomes that were consistent with usual court practice, more victims were expected to receive the outcomes that they sought.

Through their courtroom experience, VIP staff became familiar with the outcomes that court officials believed appropriate for various types of cases. In practice, VIP staff tended to interpret victims' desires to more closely approximate these outcomes when presenting the information to prosecutors. At times, the staff also tried to dissuade victims from seeking outcomes they thought were unrealistic, and suggested appropriate alternatives. In one case observed by researchers, for example, a victim who had been shot in the hand told the VIP representative that the defendant “should be put away—he's crazy.” The VIP representative agreed to tell officials of the victim's wishes, but also suggested that if the case were to be adjourned in contemplation of dismissal with an order that the defendant pay restitution, the victim might recover his hospital expenses. In discussing the case with the prosecutor, the VIP representative mentioned only the victim's medical bills.<sup>24</sup>

VIP's information about the outcomes desired by victims had a limited effect upon court disposition. There was no significant difference between the two court parts in victims' satisfaction with case outcomes or in victims' beliefs that their desires had an effect on the outcome of the case.<sup>25</sup> Increases were observed in the frequency of both court-

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<sup>22</sup> 27% compared to 34%, respectively.

<sup>23</sup> 37% compared to 38%, respectively.

<sup>24</sup> Ironically, though he did not know that was what the victim wanted, the prosecutor demanded jail time, and the case was held for the grand jury.

<sup>25</sup> In VIP's part, 48% of victims reported being satisfied with the outcome of their case and 44% reported having had an effect upon the outcome, compared to 43% and 45%, respectively, in the control part.

**TABLE 1**  
SENTENCES OF CONVICTED DEFENDANTS BY COURT PART<sup>a</sup>

	<u>VIP Court Part</u>	<u>Control Court Part</u>
Conditional Discharge	41%	29%
Fine	21	37
Probation	12	12
Jail Time		
Two Months or Less	10	11
Two to Six Months	12	9
More than Six Months	4	2
TOTAL <sup>b</sup>	100%	100%
(n)	(140)	(126)
Chi-square = 8.90 (p < .05)		

<sup>a</sup>In six cases where more than one type of sentence was imposed, defendants were categorized according to the most severe sentence (jail was regarded as most severe, conditional discharges least severe).

<sup>b</sup>Excludes nine cases in which sentences had not yet been imposed at the time of data collection.

ordered restitution<sup>26</sup> and written admonishments warning defendants to stay away from victims.<sup>27</sup> Table 1 shows sentences of convicted defendants by court part. Consistent with the increase in the use of restitution and admonishments, Table 1 shows that a greater proportion of convicted defendants in VIP's court part were sentenced to conditional discharges, in which the court often also orders defendants to pay restitution or stay away from victims, and fewer were sentenced to pay fines to the court than in the control part. Still, interviews with victims in VIP's part revealed that 84% of those who had incurred property loss or medical expenses were not awarded restitution. Moreover, failure to obtain restitution was the second most commonly cited reason for victim dissatisfaction with case outcomes, mentioned by 23% of dissatisfied victims.

As expected, VIP was less successful in satisfying victims who desired punitive outcomes than those who desired restitution or protection. Table 2 shows case dispositions by court part. Table 2 shows that there were no significant differences between the court parts in either the pro-

<sup>26</sup> 5.6 cases per month in VIP's court part, compared to 2.6 cases per month in the control part ( $t = 2.84$ ,  $df = 16$ ,  $p < .05$ ).

<sup>27</sup> 6.3 admonishments per month in VIP's court part, compared to 0.7 per month in the control part ( $t = 3.01$ ,  $df = 10$ ,  $p < .05$ ).

portion of cases held for the grand jury or misdemeanor convictions. Moreover, among defendants convicted of misdemeanors, there were no significant differences between the two court parts in the proportion of defendants sentenced to serve time in jail.<sup>28</sup> Failure of the court to punish defendants severely enough was the most frequently cited reason for dissatisfaction with case outcomes, mentioned by 70% of victims.

Observations and interviews with court officials and VIP staff suggested that VIP had only a slight effect on case outcomes, in part because courtroom prosecutors, to whom VIP presented victims' concerns, really did not have much discretion in deciding what sort of disposition to seek in plea negotiations. One restriction on prosecutors arose from their desire to accommodate the needs of other officials. One case observed by researchers, for example, had previously been adjourned for the defendant to pay restitution to the victim, with the understanding that it would be adjourned in contemplation of dismissal (ACD) once the defendant paid.<sup>29</sup> On the observation date, the defendant had not yet paid. The VIP representative asked the prosecutor to request another adjournment, arguing that, if the ACD were granted immediately, the likelihood of payment would be reduced. Judges dislike carrying open cases on their calendars, however, when the cases can be disposed of readily. Although the prosecutor had no particular interest in the

**TABLE 2**  
CASE DISPOSITIONS BY COURT PART

	VIP Court Part	Control Court Part
Dismissal	29%	30%
Adjournment in Contemplation of Dismissal	12	10
Guilty Plea	32	33
Case Transferred to Grand Jury	26	27
Other	*	*
TOTAL	100%	100%
(n)	(555)	(553)

\*Less than 0.5%

<sup>28</sup> See *supra* Table 1.

<sup>29</sup> ACDs are dismissed in six months if the defendant is not rearrested and abides by special conditions set by the court. In practice, few ACDs are reopened even if conditions are violated.

immediate granting of the ACD, he acquiesced to the judge's wish, over the protest of the VIP representative.

Courtroom prosecutors' discretion, and therefore their ability to take victims' interests into account, was also restricted by the policies of their own office. In Brooklyn, each felony case is reviewed prior to arraignment by a senior prosecutor who writes instructions for the less-experienced courtroom prosecutors, telling them how to handle the case. After disposition, in addition, serious felony cases and all dismissed felonies are reviewed by supervisors to make sure that the courtroom prosecutor acted in accordance with office policy and the screening prosecutor's instructions. A Legal Aid Society supervisor said that he doubted that VIP's information about victims' interests would have an impact because, in his opinion, courtroom prosecutors were afraid to use their own judgment and to go against the instructions of the screening prosecutor.

These constraints, and the natural inclination of prosecutors not to relinquish any of their control over cases to VIP, meant that prosecutors frequently did not convey VIP's information about victims' concerns to judges and probably often failed to use the information in determining their own position in cases as well. It was for these reasons that open disagreements occasionally arose between VIP staff and prosecutors, and that VIP staff sought direct access to judges by taking part in bench conferences.

### C. ACCEPTANCE OF THE PROJECT BY COURT OFFICIALS

Prosecutors accepted having a VIP representative at their table, and seemed to value some of the services that VIP staff offered. For example, nine of ten prosecutors interviewed agreed that VIP's efforts to get victims to court helped the court to run more smoothly.<sup>30</sup> Nine of the ten prosecutors also felt that VIP staff performed an important clerical function.<sup>31</sup>

Prosecutors were much less receptive, however, to VIP activities that had an impact on case decisionmaking. Before the project began, VIP staff were admonished by the District Attorney's Criminal Court

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<sup>30</sup> Research data showed that, indeed, VIP's efforts to notify victims of court dates met with some success. Sixty-eight percent of interviewed victims with cases in VIP's court part reported coming to court at least once, compared to 57% of victims with cases in the control part ( $t = 2.01$ ,  $df = 291$ ,  $p < .025$ ). Victims in the control part were also sent notification letters through another source. There was, however, no telephone follow-up to the letters.

<sup>31</sup> Clerical tasks that VIP performed included calling in victims on telephone alert status whose presence was needed, aiding prosecutors with paperwork, calling the grand jury to find out whether an indictment had been filed, and so forth.

Bureau Chief against interfering in case processing. Because the exact purpose of the project was to affect case decisionmaking, however, some conflict between VIP staff and prosecutors was inevitable as prosecutors saw their authority as the sole representative of the "people's" viewpoint challenged.<sup>32</sup> Five of the ten prosecutors interviewed believed that VIP staff sometimes went too far in encouraging consideration of victims' interests. VIP staff and prosecutors also disagreed about sharing information that some victims were unwilling to come to court. Project staff sometimes obtained this information when notifying victims of court dates. Observations of researchers and interviews with VIP staff both suggested that prosecutors very rarely shared this information with judges or defense attorneys. In several instances, this led to open disagreement between VIP staff, who thought the information should be shared, and prosecutors, who did not.

Prosecutors tended to be uneasy about direct interaction between VIP staff and judges, and within the first few months of the project's inception, the district attorney's office established a rule that VIP staff should not initiate conversations with judges. Still, some prosecutors permitted VIP staff to approach the bench with them for plea conferences.

Judges, more so than prosecutors, seemed to value VIP as a source of information about cases and felt that VIP's familiarity with cases aided the decision process.<sup>33</sup> Sometimes, judges questioned VIP staff about victims; at other times, VIP staff volunteered information to the judges. As time went on, relationships did develop between VIP staff and judges assigned to the court part.

Legal Aid Society attorneys were less than enthusiastic about VIP's presence in the courtroom. Several felt that VIP staff worked so closely with prosecutors that the project was simply "an arm of the prosecution." They believed that the project hindered the defense by bringing more victims to court, by "pressuring" victims into cooperating with the prosecution even when the victims were willing to drop the case, and by

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<sup>32</sup> After one series of vocal disagreements in the courtroom between a VIP representative and a prosecutor, a meeting was called by the bureau chief to discuss VIP's interference in cases. One of the statements made at the meeting was that VIP staff should never openly disagree with prosecutors in the courtroom; if a problem arose, the VIP representative was to wait until later to deal with it. It was also stated that VIP staff had no right to suggest to a prosecutor what to do with a case and that VIP staff should not even talk in the courtroom (instead, they should communicate with prosecutors in writing). Ultimately, no strict rules were laid down, but the message was clear that VIP staff ought to exercise greater restraint.

<sup>33</sup> For example, one judge who was interviewed said that while she was presiding in VIP's court part, several new prosecutors were assigned to the part. According to the judge, VIP staff often had to give her information about victims and facts about the incident because the prosecutors "didn't know what they were doing. The VIP staff were the only people who knew what was going on. I don't know what I would have done without them."

restricting the defense's access to victims in the victim reception center.<sup>34</sup>

## V. CONCLUSION

VIP was intended to provide a service to all parties in Brooklyn Criminal Court by facilitating communication between court officials and victims. Yet once the project began, prosecutors became upset by what they felt was a project bias toward victim interests, and defense attorneys became upset by what they saw as a project bias toward prosecution interests. Indeed, VIP staff could hardly have avoided becoming caught up in partisan conflicts in an environment in which three different points of view—prosecution, defense, and victim—compete for supremacy. To a far greater extent than in other Vera Institute projects, VIP staff were *supposed* to cultivate relationships with other parties in the court, in particular with prosecutors and victims. Working closely with both of these groups on a daily basis, VIP staff developed allegiances to each.

Getting caught up in partisan struggles produced manifest role conflict among VIP staff and, in some ways, blunted the project's effectiveness. The close formal relationship between VIP and the prosecutors' office, and the identification with prosecutors' values that VIP staff developed over time tended to "reform" the project in ways that were unforeseen by its planners. Actions were sometimes taken that were inconsistent with victims' interests. The knowledge that VIP staff developed of dispositions appropriate to particular types of offenses led them to predict outcomes and, at times, fail to communicate victims' desires that the staff thought were inconsistent with those predictions.<sup>35</sup> Moreover, the close association of VIP staff with the prosecution alienated defense attorneys who might have been willing to work toward mutually acceptable outcomes, particularly restitution.

On the other hand, the allegiance that VIP staff felt toward victims lessened prosecutors' acceptance of the staff. Some prosecutors felt that VIP staff inappropriately took the side of victims over that of the district attorney's office, and encouraged administrators in the prosecutor's office to restrict the project's activities.

VIP was also hampered by the lack of incentive for officials to include victims' interests routinely in deciding case outcomes. VIP was based upon a technocratic reform premise that court officials, if given a

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<sup>34</sup> One defense attorney objected so strongly to a VIP representative's participation at a bench conference that he asked the judge to hold her in contempt, to bar her from the courtroom, and to subpoena her records.

<sup>35</sup> For an extensive treatment of how the court system "reforms" reform projects, see F. Dill, *Bail and Bail Reform: A Sociological Study* (1972) (unpublished Ph.D. dissertation, University of California, Berkeley).

more comprehensive information base, will use the information to make "better" decisions.<sup>36</sup> The experience of VIP, like the experience of other reform programs based on the same premise,<sup>37</sup> suggests that merely providing court officials with the opportunity for changed behavior is not sufficient to bring about reform when they have a stake in maintaining the status quo. To be successful, a reform project must alter the incentives of those whose behavior it seeks to change.<sup>38</sup>

The small incentives that VIP had to offer prosecutors, such as improved information about cases, getting victims to court, and clerical assistance, could not offset the strong motivations for prosecutors not to consider victims' interests. Greater responsiveness to victims' interests often would have meant seeking dispositions that deviated both from established norms and from the expectations of other court officials. The result might have been increased difficulty in reaching negotiated dispositions, more trials, more time in court, and less intra-system cooperation. More importantly, by routinely presenting victims' interests to the court, prosecutors risked the possibility that the victim's position would be accepted by judges in lieu of their own. Judges might have been less willing to drop cases that prosecutors considered inconsequential if they knew that victims were adamant about prosecuting. Conversely, judges might have been less willing to pursue cases that the district attorney's office had an interest in pursuing if they knew that victims were not interested in cooperating. Prosecutors stood to lose some of their control over cases if victims' interests were regularly available for the court to consider.

In retrospect, it is easy to see some of the problems created by VIP's particular method of trying to introduce reform. It is harder, however, to suggest a better approach to encouraging consideration of the victim's viewpoint in case decisionmaking.

One thing that VIP's experience did suggest is that prosecutors are particularly likely to resist consideration of the victim's point of view because it is prosecutors' control that would be most eroded if the victim were given a greater voice. Because of this, it probably would be far more effective to present victims' interests directly to judges rather than rely on prosecutors to do so. Judges, as arbiters of different viewpoints, might be more receptive to a "second opinion" on what the commu-

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<sup>36</sup> See R. NIMMER, *THE NATURE OF SYSTEM CHANGE: REFORM IMPACT IN THE CRIMINAL COURTS* 20-21 (1978).

<sup>37</sup> See, e.g., Lenihan, *Telephones and Raising Bail: Some Lessons in Evaluation Research*, 1 EVALUATION Q. 569 (1977) (reform allowing defendants detained after arraignment on bail to make call from detention for purpose of raising bail); F. Dill, *supra* note 35 (pretrial release program).

<sup>38</sup> M. FEELEY, *COURT REFORM ON TRIAL* 198-99 (1983).

nity's interests are.<sup>39</sup>

VIP's experience also suggests that because the disincentives for officials to consider victims' interests are strong, programmatic action may not bring about change unless it is accompanied by legislative action mandating that victims be given the chance to express their opinions orally or in writing. Obviously, legislative action would not guarantee acceptance of change by local criminal court officials. Conferring upon victims some measure of legal standing in court, however, would seem to be a precondition to serious consideration of their interests by officials. Such legislative change, linked with programmatic action as the vehicle for gathering and distributing information about victims' interests, may be the best way to restore victims to the position of interested parties in criminal cases.

Victims' views may not always be identical to those of the community, but they probably are often closer to the public's sentiments than those of courthouse professionals, who have a substantial interest in processing cases in summary fashion and who may tend to become insensitive to the human suffering involved in the "normal crimes" they process.<sup>40</sup> In the vast majority of criminal cases, those that the public never hears about, victims' opinions could add another perspective from which to view incidents brought before the court.

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<sup>39</sup> Placing the victim in the process as a party would force the prosecutor to justify to the court his decision not to proceed, or to proceed on assumptions about the facts and the law that differ from the victim's account. It would provide the judge with a party who has a genuine interest in challenging and correcting the version of fact and law preferred by the prosecutor or defense counsel or both. A. Goldstein, *supra* note 4, at 11.

<sup>40</sup> See Sudnow, *Normal Crimes: Sociological Factors of the Penal Code in a Public Defender's Office*, 12 SOC. PROBS. 255 (1965).